

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

INTERNATIONAL BUSINESS MACHINES CORPORATION,)	
)	C.A. No. 16-122-LPS
)	
Plaintiff,)	JURY TRIAL DEMANDED
)	
v.)	PUBLIC VERSION
)	
GROUPON, INC.)	
)	
Defendant.)	

**DECLARATION OF KARIM Z. OUSSAYEF IN SUPPORT OF INTERNATIONAL
BUSINESS MACHINE CORPORATION'S MOTION TO STRIKE GROUPON INC.'S
LATE-DISCLOSED INVALIDITY THEORIES**

OF COUNSEL:

John M. Desmarais
Karim Oussayef
Laurie N. Stempler
Robert C. Harrits
Brian D. Matty
Michael Matulewicz-Crowley
DESMARAIS LLP
230 Park Avenue
New York, NY 10169
Tel: (212) 351-3400

David E. Moore (#3983)
Bindu A. Palapura (#5370)
Stephanie E. O'Byrne (#4446)
POTTER ANDERSON & CORROON LLP
Hercules Plaza, 6th Floor
1313 N. Market Street
Wilmington, DE 19801
Tel: (302) 984-6000
dmoore@potteranderson.com
bpalapura@potteranderson.com
sobyne@potteranderson.com

*Attorneys for Plaintiff
International Business Machines Corporation*

Dated: September 29, 2017
Public Version Dated: October 12, 2017
5418327 / 43155

I, Karim Z. Oussayef, declare as follows:

1. I am an attorney with the law firm of Desmarais LLP, counsel of record for Plaintiff International Business Machines Corporation (“IBM”) in the above-captioned matter, and I am admitted *pro hac vice* to this Court. I submit this declaration based on personal knowledge, and if called upon as a witness, I could competently testify to the truth of each statement herein.

2. I make this declaration in support of IBM’s Motion to Strike Groupon Inc.’s (“Groupon”) Late-Disclosed Invalidity Theories.

3. Attached hereto as Exhibit 1 is a true and correct copy of Groupon’s Final Invalidity Contentions, which Groupon served on September 25, 2017.

4. Attached hereto as Exhibit 2 is a true and correct copy of Groupon’s Preliminary Invalidity Contentions, which Groupon served on February 22, 2017.

5. Attached hereto as Exhibit 3 is a true and correct copy of a document bearing Bates numbers GROUP309556 - GROUP309560, which Groupon produced on September 26, 2017. **Filed under seal.**

6. Attached hereto as Exhibit 4 is a true and correct copy of a May 5, 2017 email from J. Benzler (counsel for Groupon) to R. Harrits (counsel for IBM).

7. Attached hereto as Exhibit 5 is a true and correct copy of an excerpt of the file history of U.S. Patent Number 5,691,601, which IBM produced to Groupon on October 7, 2016. Annotation has been added for clarity.

8. Attached hereto as Exhibit 6 is a true and correct copy of an excerpt of U.S. Patent Number 6,016,484 to Williams et al., which Groupon produced to IBM on February 22, 2017.

9. Attached hereto as Exhibit 7 is a true and correct copy of Groupon's Second Amended Initial Disclosures, which Groupon served on August 23, 2017. Annotation has been added for clarity.

10. Attached hereto as Exhibit 8 is a true and correct copy of an August 25, 2017 email from L. Stempler (counsel for IBM) to P. Haack (counsel for Groupon).

11. Attached hereto as Exhibit 9 is a true and correct copy of an August 28, 2017 email from L. Stempler (counsel for IBM) to P. Haack (counsel for Groupon).

12. Attached hereto as Exhibit 10 is a true and correct copy of a September 15, 2017 email from R. Tyz (counsel for Groupon) to D. Moore (counsel for IBM).

13. Attached hereto as Exhibit 11 is a true and correct copy of a September 26, 2017 email from S. Mehta (counsel for Groupon) to K. Oussayef (counsel for IBM).

14. On September 27, 2017 at 2 pm ET, lead and local counsel for IBM and Groupon met and conferred to discuss the subject of this motion. During the meet and confer, Groupon's counsel stated that it had discussed the Amazon 1995 code with Paul Davis prior to the code being made available to IBM on September 15, 2017. Groupon also stated that they waited to disclose their invalidity theories regarding the Amazon 1995 code until they had confirmed with Mr. Davis how the code worked. Groupon's counsel further stated that it suffered no particular difficulties in locating the Spinning the Web or the Williams references.

15. On September 21, 2017, one of IBM's experts was unable to locate the Amazon 1995 code on the Source Code computer at the offices of counsel for Groupon, Fenwick & West LLP ("Fenwick"). Staff from Fenwick had to search for and load the code onto the Source Code computer before IBM's expert could access it.

16. Attached hereto as Exhibit 12 is a true and correct copy of September 26, 2017 correspondence from S. Mehta (counsel for Groupon) to R. Harrits (counsel for IBM).

I declare under penalty of perjury under penalty of perjury that the foregoing is true and correct.

Executed on September 29, 2017.

/s/ Karim Z. Oussayef

Karim Z. Oussayef